

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

NEW BERN RIVERFRONT  
DEVELOPMENT, LLC,

Plaintiff,

vs.

WEAVER COOKE CONSTRUCTION,  
LLC; TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA; J.  
DAVIS ARCHITECTS, PLLC; FLUHRER  
REED, PA; AND NATIONAL ERECTORS  
REBAR, INC. F/K/A NATIONAL  
REINFORCING SYTEMS, INC.,

Defendants,

WEAVER COOKE CONSTRUCTION,  
LLC, and TRAVELERS CASUALTY AND  
SURETY COMPANY OF AMERICA,

Defendants,  
Counterclaimants,  
Crossclaimants, and Thirty-  
Party Plaintiffs,

v.

J. DAVIS ARCHITECTS, PLLC; FLUHRER  
REED PA; SKYSAIL OWNERS  
ASSOCIATIONS, INC.; NATIONAL  
REINFORCING SYSTEMS, INC.;  
ROBERT P. ARMONGSTRONG, JR.,  
INC.; SUMMIT DESIGN GROUP, INC.;  
CAROLINA CUSTOMER MOULDING,  
INC.; CURENTON CONCRETE WORKS,  
INC.; WILLIAM H. DAIL d/b/a DD  
COMPANY, EAST CAROLINA  
MASONRY, INC.; GOURAS, INC.;  
HAMLIN ROOFING SERVICES, INC.;  
HUMPHREY HEATING & AIR  
CONDITIONS, INC.; PERFORMANCE  
FIRE PROTECTION, LLC; RANDOLPH  
STAIR AND RAIL COMPANY; STOCK

CIVIL ACTION NO. 09-10340-8-JRL

ADVERSARY  
PROCEEDING  
10-0023-8-SWH

**THIRD-PARTY DEFENDANT WILLIAM  
H. DAIL d/b/a DD COMPANY'S  
RESPONSE IN SUPPORT OF THE  
MOTION TO LIFT STAY AND  
SUBSTITUTE WELLS FARGO BANK,  
N.A. AS THE REAL PARTY IN  
INTEREST**

BUILDING SUPPLY, LLC; PLF OF  
SANFORD, INC. f/d/b/a LEE WINDOW &  
DOOR COMPANY; UNITED FORMING,  
INC. a/d/b/a UNITED CONCRETE, INC.;  
AND WATERPROOFING SPECIALTIES,  
INC.

Crossclaim, Counterclaim  
and Third-Party Defendants.

and

NATIONAL ERECTORS REBAR, INC.,  
Defendant, Counterclaimant,  
Crossclaimant, and Third-  
Party Plaintiff

v.

ROBERT P. ARMSTRONG, JR.; ROBERT  
ARMSTRONG, JR., INC; SUMMIT  
DESIGN GROUP, INC.; JMW CONCRETE  
CONTRACTORS, and JOHNSON'S  
MODERN ELECTRIC CO, INC.,  
Third-Party Defendants.

**THIRD-PARTY DEFENDANT WILLIAM H. DAIL d/b/a DD COMPANY'S RESPONSE  
IN SUPPORT OF THE MOTION TO LIFT STAY AND SUBSTITUTE WELLS FARGO  
BANK, N.A. AS THE REAL PARTY IN INTEREST**

NOW COMES Third-Party Defendant William H. Dail d/b/a DD Company, by and through undersigned counsel, and pursuant to Rule 17 of the Federal Rules of Civil Procedure and Rule 7007-1(b) of the U.S Bankruptcy Court for the Eastern District of North Carolina, to hereby submit this Response in Support of the Motion to Lift Stay and Substitute Wells Fargo Bank, N.A. as the real party in interest.

The Motion to Lift Stay and Substitute Wells Fargo Bank, N.A. as the real party in interest was filed on January 19, 2018 (Doc. 1472) by Defendants Weaver Cooke Construction, LLC and Travelers Casualty and Surety Company of America.

Third-Party Defendant William H. Dail d/b/a DD Company hereby objects that

Wells Fargo is not a Plaintiff. Wells Fargo should be a plaintiff. Wells Fargo, already a party to this litigation, controls the adversary proceeding on behalf of New Bern Riverfront Development, LLC ("NRBD") and Wells Fargo bears the cost of the litigation and will enjoy the benefits of any potential recovery of NRBD in this litigation. As such, this action, including any related trial for alleged construction defects and damages to the real property at issue, must be prosecuted in the name of the real party in interest as set forth in Rule 17(a) of the Federal Rules of Civil Procedure. Third Party Defendant William H. Dail d/b/a DD Company further incorporates by reference the memorandum submitted by Defendants on Jan. 19, 2018, Doc. 1473.

For these reasons and those submitted in the Memorandum submitted by Defendants on Jan. 19, 2018 (Doc. 1473), Third Party Defendant William H. Dail prays that this Court enter an Order lifting the stay of January 27, 2012 and substituting Wells Fargo as the real party in interest.

Respectfully submitted, this the 9th day of February, 2017.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following parties through their counsel of record:

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This the 9<sup>th</sup> day of February, 2018.

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